

AO 120 (Rev.3/04)

TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised
 that a court action has been filed in the U.S. District Court San Diego on the following Patents or Trademarks:

DOCKET NO.	DATE FILED	U.S. DISTRICT COURT
07cv1994-DMS	10/15/2007	Southern District of California
PLAINTIFF	DEFENDANT	
Matlink, Inc.		Home Depot, et al.
PATENT OR TRADEMARK NO.	PATENT OR TRADEMARK NO.	PATENT OR TRADEMARK NO.
1 See Attached	6,134,557	11
2 6,950,826	7	12
3	8	13
4	9	14
5	10	15

In the above-entitled case, the following patent(s)/trademark(s) have been included:

DATE INCLUDED	INCLUDED BY			
	<input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading			
PATENT OR TRADEMARK NO.	PATENT OR TRADEMARK NO.	PATENT OR TRADEMARK NO.		
1	6	11		
2	7	12		
3	8	13		
4	9	14		
5	10	15		

In the above-entitled case, the following decision has been rendered or judgment issued:

DECISION/JUDGMENT				
				
CLERK	(BY) DEPUTY CLERK	S/K. Madden	DATE	10/16/07
W. Samuel Hamrick, Jr.				

1 2 3 4 5 6 7

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

11 MATLINK, INC., a California Corporation,
and CRAIG FREEMAN, an individual

CASE NO. 07cv1994 DMS(BLM)

ORDER VACATING JUDGMENT

13
14 HOME DEPOT U.S.A., INC., a Delaware
15 Corporation; LOWE'S HOME IMPROVEMENT,
INC., a North Carolina Corporation,

Plaintiffs

15

Defendants

¹⁷ AND ALL RELATED COUNTERCLAIMS

19 On September 18, 2008, this Court entered a Judgment in a Civil Case pursuant to the Court's
20 order granting Defendants' motion for summary judgment. That order resolved the sole claim in
21 Plaintiff's Second Amended Complaint, but did not explicitly address the Defendants' Counterclaims.
22 Counsel for Defendant Home Depot informed the Court that the parties are working on a proposed
23 final judgment that addresses all claims, and that counsel will either submit that proposed final
24 judgment to the Court for its review and signature or advise the Court that the parties are unable to
25 agree, in which case the Court will enter its own final judgment that addresses all claims. In light of
26 these events, the Court vacates the Judgment entered on September 18, 2008. Counsel shall either file

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28 11

ORIGINAL

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8 Attorneys for Plaintiff

10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 MATLINK INC., a California Corporation,

13 Plaintiff

14 v.

15 THE HOME DEPOT, INC., a Delaware
Corporation; LOWE'S COMPANIES INC.,
a North Carolina Corporation,

16 Defendants.

17 Case Number: '07 CV 1994 DNS (BLM)

18 **COMPLAINT FOR PATENT INFRINGEMENT
OF U.S. PATENT NOS. 6,134,557 AND
6,950,826, AND FOR PERMANENT
INJUNCTIONS**

19 **JURY TRIAL DEMANDED**

20 Plaintiff alleges as follows:

21 **JURISDICTION AND VENUE**

22 1. This court has personal jurisdiction over the Defendants because they are
domiciled within the state and/or have consented to personal jurisdiction and/or because the
23 Defendants have maintained minimum contacts with this forum state such that the exercise of
personal jurisdiction does not offend traditional notions of fair play and substantial justice and/or
24 because the Defendants have maintained activities which are substantial, continuous and
systematic and/or the Defendants have purposefully established contacts with this forum and/or
25 the claims alleged arise out of or are related to Defendants' contacts with this forum.

26
27
28 **COMPLAINT FOR PATENT INFRINGEMENT OF U.S. PATENT NOS. 6,134,557 AND 6,950,826,
AND FOR PERMANENT INJUNCTIONS**

1 2. This action for patent infringement and injunctive relief arises under the patent
2 laws of the United States, Title 35 of the United States Code, and under 28 U.S.C. § 2201.

3 3. This Court has subject matter jurisdiction under the patent laws of the United
4 States, 35 U.S.C. § 1 et seq. and under 28 U.S.C. §§ 1331, 1338(a), and 2201.

5 4. Venue is proper under 29 U.S.C. §§ 1391 (b), (c) and 1400 (b) in the Southern
6 District of California in that there is personal jurisdiction over the corporate Defendants at the
7 commencement of this action in this district. (*VE Holding Corp. v. Johnson Gas Appliance Co.*
8 (1990) 917 F2d 1574, 1583.) Additionally, this district is the judicial district in which a
9 substantial part of the events or omissions giving rise to the claim occurred and where the
10 corporate Defendant maintains a principal place of business, and/or where liability arises, and/or
11 where the individual Defendant resides.

PARTIES

13 5. Plaintiff Matlink Inc. ("Matlink") is a corporation organized and existing under the
14 laws of the State of California, having a principal place of business in Anza, California.

15 6. Plaintiff alleges on information and belief that Defendant The Home Depot, Inc.
16 ("Home Depot") is a corporation organized and existing under the laws of the state of Delaware,
17 having its principal place of business in Atlanta, Georgia, and doing business in San Diego,
18 California.

19 7. Plaintiff alleges on information and belief that Defendant Lowe's Companies Inc.
20 ("Lowes") is a corporation organized and existing under the laws of the State of North Carolina,
21 having a principal place of business in Mooresville, North Carolina, and doing business in San
22 Diego, California.

FIRST CLAIM FOR RELIEF

INFRINGEMENT OF PATENT NO. 6,134,557

(Against Defendant The Home Depot, Inc.)

26 8. Plaintiff hereby incorporates by this reference each and every allegation preceding
27 and subsequent to this claim for relief as part of this claim for relief as though set forth in full

1 at this point.

2 9. United States Patent No. 6,134,557 (the "557 Patent") issued on October 17,
3 2000. A true and correct copy of the '557 Patent is attached hereto as Exhibit 1 and
4 incorporated herein by this reference.

5 10. Craig Freeman is the sole owner of the '557 Patent.

6 11. Plaintiff Matlink Inc. is the exclusive licensee of the '557 Patent.

7 12. Plaintiff is informed and believes that Home Depot has infringed, and still is
8 infringing, the '557 patent by making, using, selling, offering for sale and/or licensing products
9 and services covered by one or more claims of the '557 Patent without Plaintiff's authorization
10 or consent. These products and services include, *inter alia*, Home Depot's web site provides a
11 method to order construction materials and supplies for contractors and the general public to
12 be picked-up at regional sites or delivered to a specific site.

13 13. Plaintiff is informed and believes that Home Depot has infringed the '557 Patent,
14 and will continue to do so unless enjoined by this Court.

15 14. Plaintiff is informed and believes and thereon alleges that Home Depot is aware
16 of the '557 Patent and that Home Depot's infringement has been willful. Plaintiff alleges that
17 prior to the filing of this action, Plaintiff notified Home Depot of its infringement of the '557
18 Patent and Home Depot failed to cease its infringement of the '557 Patent.

19 15. By reason of the foregoing, Plaintiff has suffered damages in an amount to be
20 proven at trial and has suffered irreparable loss and injury.

21 16. The acts of infringement described above are willful, deliberate and in reckless
22 disregard of Plaintiff's patent rights.

23 **SECOND CLAIM FOR RELIEF**

24 **INFRINGEMENT OF PATENT NO. 6,950,826**

25 ***(Against Defendant The Home Depot, Inc.)***

26 17. Plaintiff hereby incorporates by this reference each and every allegation preceding
27 and subsequent to this claim for relief as part of this claim for relief as though set forth in full

28

1 at this point.

2 18. United States Patent No. 6,950,826 (the "'826 Patent") issued on September 27,
3 2005. A true and correct copy of the '826 Patent is attached hereto as **Exhibit 2** and
4 incorporated herein by this reference.

5 19. Craig Freeman is the sole owner of the '826 Patent.

6 20. Plaintiff Matlink Inc. is the exclusive licensee of the '826 Patent.

7 21. Plaintiff is informed and believes that Home Depot has infringed, and still is
8 infringing, the '826 Patent by making, using, selling, offering for sale and/or licensing products
9 and services covered by one or more claims of the '826 Patent without Plaintiff's authorization
10 or consent. These products and services include, *inter alia*, Home Depot's web site provides a
11 method to order construction materials and supplies for contractors and the general public to
12 be picked-up at regional sites or delivered to a specific site.

13 22. Plaintiff is informed and believes that Home Depot has infringed the '826 Patent,
14 and will continue to do so unless enjoined by this Court.

15 23. Plaintiff is informed and believes and thereon alleges that Home Depot is aware
16 of the '826 Patent and that Home Depot's infringement has been willful. Plaintiff alleges that
17 prior to the filing of this action, Plaintiff notified Home Depot of its infringement of the '826
18 Patent and Home Depot failed to cease its infringement of the '826 Patent.

19 24. By reason of the foregoing, Plaintiff has suffered damages in an amount to be
20 proven at trial and has suffered irreparable loss and injury.

21 25. The acts of infringement described above are willful, deliberate and in reckless
22 disregard of Plaintiff's patent rights.

23 **THIRD CLAIM FOR RELIEF**

24 **INFRINGEMENT OF PATENT NO. 6,134,557**

25 ***(Against Defendant Lowe's Companies Inc.)***

26 26. Plaintiff hereby incorporates by this reference each and every allegation preceding
27 and subsequent to this claim for relief as part of this claim for relief as though set forth in full
28

1 at this point.

2 27. United States Patent No. 6,134,557 (the "557 Patent") issued on October 17,
3 2000. A true and correct copy of the '557 Patent is attached hereto as **Exhibit 1** and
4 incorporated herein by this reference.

5 28. Craig Freeman is the sole owner of the '557 Patent.

6 29. Plaintiff Matlink Inc. is the exclusive licensee of the '557 Patent.

7 30. Plaintiff is informed and believes that Lowes has infringed, and still is infringing,
8 the '557 patent by making, using, selling, offering for sale and/or licensing products and services
9 covered by one or more claims of the '557 Patent without Plaintiff's authorization or consent.
10 These products and services include, *inter alia*, Lowes' web site provides a method to order
11 construction materials and supplies for contractors and the general public to be picked-up at
12 regional sites or delivered to a specific site.

13 31. Plaintiff is informed and believes that Lowes has infringed the '557 Patent, and
14 will continue to do so unless enjoined by this Court.

15 32. Plaintiff is informed and believes and thereon alleges that Lowes is aware of the
16 '557 Patent and that Lowes' infringement has been willful. Plaintiff alleges that prior to the
17 filing of this action, Plaintiff notified Lowes of its infringement of the '557 Patent and Lowes
18 failed to cease its infringement of the '557 Patent.

19 33. By reason of the foregoing, Plaintiff has suffered damages in an amount to be
20 proven at trial and has suffered irreparable loss and injury.

21 34. The acts of infringement described above are willful, deliberate and in reckless
22 disregard of Plaintiff's patent rights.

23 **FOURTH CLAIM FOR RELIEF**

24 **INFRINGEMENT OF PATENT NO. 6,950,826**

25 ***(Against Defendant Lowe's Companies Inc.)***

26 35. Plaintiff hereby incorporates by this reference each and every allegation preceding
27 and subsequent to this claim for relief as part of this claim for relief as though set forth in full
28

1 at this point.

2 36. United States Patent No. 6,950,826 (the "826 Patent") issued on September 27,
3 2005. A true and correct copy of the '826 Patent is attached hereto as **Exhibit 2** and
4 incorporated herein by this reference.

5 37. Craig Freeman is the sole owner of the '826 Patent.

6 38. Plaintiff Matlink Inc. is the exclusive licensee of the '826 Patent.

7 39. Plaintiff is informed and believes that Lowes has infringed, and still is infringing,
8 the '826 Patent by making, using, selling, offering for sale and/or licensing products and services
9 covered by one or more claims of the '826 Patent without Plaintiff's authorization or consent.
10 These products and services include, *inter alia*, Lowes' web site provides a method to order
11 construction materials and supplies for contractors and the general public to be picked-up at
12 regional sites or delivered to a specific site.

13 40. Plaintiff is informed and believes that Lowes has infringed the '826 Patent, and
14 will continue to do so unless enjoined by this Court.

15 41. Plaintiff is informed and believes and thereon alleges that Lowes is aware of the
16 '826 Patent and that Lowes' infringement has been willful. Plaintiff alleges that prior to the
17 filing of this action, Plaintiff notified Lowes of its infringement of the '826 Patent and Lowes
18 failed to cease its infringement of the '826 Patent.

19 42. By reason of the foregoing, Plaintiff has suffered damages in an amount to be
20 proven at trial and has suffered irreparable loss and injury.

21 43. The acts of infringement described above are willful, deliberate and in reckless
22 disregard of Plaintiff's patent rights.

23

24 **WHEREFORE**, Plaintiff prays for judgment against Defendants as follows:

25 1. That Defendants have infringed the '557 and '826 Patents under 35 U.S.C. § 271
26 (a), (b), (c), and (g);

27 2. That Defendants have induced infringement and/or contributorily infringed the
28 '557 and '826 Patents;

1 3. Enjoining and restraining each Defendant, its officers, agents, subsidiaries,
2 servants, partners, employees, attorney and all others in active concert or participation with
3 Defendants from:

DEMAND FOR JURY TRIAL

17 In accordance with Fed. Rule Civ. Proc. 38(b) Plaintiff MATLINK INC. demands trial by
18 jury on all issues so triable.

Respectfully submitted,

20 | Dated: October 15, 2007

WIRTZ HELLENKAMP LLP

Richard M. Wirtz
Richard M. Wirtz
Attorney for Plaintiff

24 Dated: October 15, 2007

MICHAEL E. KLICPERA

Michael E. Klicpera
Michael E. Klicpera
Attorney for Plaintiff

United States District Court

SOUTHERN DISTRICT OF CALIFORNIA

Matlink Inc., a California Corporation and Craig Freeman, an individual,

v.

JUDGMENT IN A CIVIL CASE

Home Depot U.S.A. Inc., a Delaware Corporation;
Lowe's HIW Inc., a North Carolina Corporation,

CASE NUMBER: 07cv1994-DMS-BLM

- Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.
- Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

The Court grants Defendants' motion for summary judgment of invalidity based on indefiniteness.

September 18, 2008

Date

W. Samuel Hamrick, Jr.

Clerk

s/ L Odierno

(By) Deputy Clerk

ENTERED ON September 18, 2008